SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2891 OF 2005

Pramod Kumar Ratanlal Lasod ....Petitioner.

Vs.

The State of Maharashtra & Anr. ....Respondents.

Mr. Lalla i/by Lalla & Lalla for petitioner

Mr. M. D. Mali, for respondent 2.

Ms. M. M. Deshmukh, APP for the State.

CORAM :- SMT. RANJANA DESAI, J.

DATE :- 18TH DECEMBER, 2006.

P. C.:-

1. The petitioner is accused 4 in C.C. No. 58/P/2002 pending on the file of 28th Metropolitan Magistrate's Esplanade Court, Mumbai. The petitioner alongwith others is charged for offences under Section 103 and 104 of Trade Mark Act 1999 (for short, 'the Act').

Subsequently the Sections 78, 79 of the Trade Mark and Mercantile Act 1958 and Section 51 read with Sections 63, 65, 69 of the Copy Right Act and section 420 read with Section 34 of the Indian Penal Code have been added during investigation.

2. In short, the case of the prosecution is that one Rajkumar Dubey has filed a complaint on behalf of the firm M/s. New India Textile which is doing business of textile goods at Mumbai. The complainant firm's registered trade mark is "'MAHABIR'. The said trademark is registered under the Trade and Mercantile Act -1958 under serial No. 381610 in class 24 in part A of the Register. The complainant learnt that one M/s. Shantinath Silk Mills of Rajasthan is manufacturing textile products under the trademark "'Mahabir' and selling it in the market. In these circumstances the complainant has lodged the complaint in L. T. Marg Police Station, Mumbai. The police carried out investigation, conducted search in Rajasthan. Since involvement of the petitioner was disclosed he was arraigned as accused 4 and charge sheet came to be filed.

3. The petitioner filed an application for discharge before the 28th Metropolitan Magistrate's Court, Esplanade Court, Mumbai. That

application was rejected. The petitioner carried a revision application before the Sessions Court, Mumbai. That application was also rejected and hence this writ petition.

4. I have heard Mr. Lalla, learned counsel for the petitioner at considerable length. Mr. Lalla submitted that there is absolutely no material against the petitioner and therefore, he ought to have been discharged. He submitted that the petitioner is not directly or indirectly concerned with the alleged offences. He is the nephew of one Pukharaj who owns Sandhya Textile Mills. The alleged panchanama is conducted at the premises of Sandhaya Textile Mills and there is no recovery from the present petitioner. Merely because the petitioner is the nephew of Pukharaj, the petitioner is arraigned as accused in the present case. The learned counsel submitted that the complaint is made against one Shantinath Silk Mills whereas the petitioner is concerned with Shantilal textile mills. Mr. Lalla further submitted that the order of learned Sessions Judge is vitiated by non application of mind because the learned Sessions Judge has at one stage stated that the petitioner has no locus standi but in the same order he has stated that there is sufficient material against the

petitioner and he is involved in the case. Mr. Lalla submitted that the order passed by the Sessions Court, must also be set aside.

5. I am not impressed by the submissions of Mr. Lalla. Admittedly the petitioner is the nephew of Pukharaj. Shantilal Textile Mills is owned by the wife of Pukharaj. Wife of Pukharaj has given power of attorney to the petitioner. A copy of the same was shown to me. The power of attorney inter-alia authorizes the present petitioner to undertake business activities of M/s. Shantilal Textile Mills which belongs to the wife of Pukharaj. Sandhya Textile mills and Shantinath Silk Mills appear to be situated in the close vicinity. The punchanama is conducted at Sandhya Textile Mills, F-198, Mandia Road, Industrial Area, District Pali, Rajasthan. The petitioner's address even in the instant petition is F-199, Mandia Road, Industrial Estate, Pali, Rajasthan. Prima facie, it does appear that accused Pukharaj alongwith present petitioner is doing business in textiles. As to how far the present petitioner is involved in the instant case only evidence can tell. The nexus between Shantinath Silk Mills and Shantinath Textile Mills will also come to light after evidence is adduced. This is certainly not a case where there is total absence of

any evidence against the petitioner. Hence, no interference is necessary in the matter.

6. In the circumstances of the case, however, in my opinion, exemplary costs of Rs.15,000/- imposed by the learned Sessions Judge must be set aside. Hence, the order passed by the learned Sessions Judge imposing exemplary costs of Rs.15,000/- is set aside. I make it clear that all observations are made by me are prima facie observations and the trial court shall deal with the case independently and uninfluenced by the same.

7. The petition is rejected.

(SMT. RANJANA DESAI, J.)